

I. PURPOSE OF THIS GUIDE

1. To provide general information regarding marital dissolution (divorce), separation or annulment. It provides an overview of the legal process which will help you do your own uncontested dissolution or separation. This guide is for use **ONLY** in conjunction with the advice of an attorney.
2. To provide a checklist of papers to complete and bring with you to your appointment with an attorney
3. To provide a model for working on your marital settlement agreement, which can be downloaded onto your disk.

II. SEPARATION, DISSOLUTION, and NULLITY

These procedures are all done through the California courts; the military has no authority to and does not grant any type of change in marital status.

SEPARATION: In California a married couple is considered to be a "community". Once the parties no longer hold themselves out to the world as a "community", they are considered to be "separated". There is no requirement in California that a couple be separated before filing for a dissolution of the marriage.

A married couple may be "separated" in any one of these four ways: 1) by court order ("legal separation"), 2) by written contract, 3) by mutual oral agreement, or 4) by one party leaving the other with the intent never to return. When problems arise it is nearly impossible to enforce an oral agreement. A signed written agreement is more enforceable, while a court order is the best tool for enforcing rights arising from separation.

The date of separation is very important; it affects the division of your property. The date of separation is the date of a court order, or if no court order exists, the date the couple stops living together with the intent not to remain together. It is not necessary for both parties to intend not to remain together; the intent of one party is sufficient. You can agree to that date, and it may occur while you both occupy the same residence.

The effect of a separation or court ordered separation is the termination of the marital community, but the parties remain married in a legal sense. This may be important for tax and military entitlement purposes. It is also important under the UCMJ because the military member can still be prosecuted for adultery even while separated.

Note that there is no waiting period or legal residency requirement for the legal separation action. You could file immediately.

SUMMARY v. REGULAR DISSOLUTION: There are two methods to dissolve your marriage in California, a regular procedure and a summary procedure. The Summary Dissolution is a simple procedure and can be used by those with short-term marriages, IF the following conditions are true when the petition is filed:

1. No children of the marriage, and the wife is not pregnant;
2. Neither spouse owns an interest in any real estate anywhere in the world;

3. One spouse has lived in California at least six months, and in the county in which you file at least three months immediately before the date you file the Petition;
4. There is LESS than \$5,000 in community debts, not counting car loans;
5. There is less than \$25,000 in community property, not counting cars, and
6. Neither spouse owns over \$25,000 separately, not counting cars..2
7. Neither spouse is to pay spousal support (alimony).

The majority of this guide is intended to assist those persons using the regular dissolution procedure. Any sections concerning children would not apply to those filing for Summary Dissolution. Section IV (Procedural Checklist, page 7) also does not apply to couples filing for Summary Dissolution. Those filing for Summary Dissolution need to be particularly careful to disclose all community and separate property (i.e., assets and debts) in the Marital Settlement Agreement. Consult an attorney before you attempt to use the summary procedure.

UNCONTESTED v. CONTESTED: The Legal Assistance Office assists clients with preparation of court forms for uncontested cases only. If your case is contested, you will not be able to use the services of the Legal Assistance Office to complete the dissolution, although you may visit this office to determine if you can make your case uncontested. If it is contested, you should consult a private attorney. A contested case is one in which the parties cannot reach an agreement on any one or more of the following issues:

1. division of property;
2. division of debts;
3. child custody and visitation;
4. child support;
5. spousal support; and
6. division of pension benefits.

It is usually worthwhile to put some energy into reaching an agreement on the legal issues of your dissolution, separation, or nullity. Agreement is more easily achievable if each spouse sees and appreciates the other's point of view. Here is what you and your family have to gain with an uncontested case:

1. It is much easier and much cheaper. A contested case in the Monterey area may cost your family several thousand dollars in attorney's fees. An uncontested case allows you and your spouse to split your property between yourselves, rather than paying a lot of attorney's fees.
2. It is more certain. The judge will almost certainly follow the terms of any agreement that is not obviously unfair.
3. It leads to better relations with your ex-spouse and your children.

Whether your divorce is contested or not, do not make related decisions based on: emotional or self-destructive grounds; fear of displeasing your spouse or a desire to "stay friends"; vengeance and get-even motivations.

NO-FAULT: California is a "no-fault" dissolution state. That means if either spouse asks the court to dissolve the marriage based on irreconcilable differences, the court will grant the dissolution. Fighting over the terms will not stop the other party from obtaining a divorce, if he or she chooses to be divorced. Fighting can make it more unpleasant and much more expensive. This does not mean you should give up your rights simply because there may be a fight over terms. This means if you are fighting over the terms only to prevent a divorce, you will be wasting your energy--California grants a divorce at the request of either party--both parties do not have to want a divorce. If fault has been an issue in your marriage you may want to discuss with the Legal Assistance Attorney whether or not you should file in another state that might consider the issue of fault.

If your spouse can not be found or declines to participate (e.g., doesn't care) after formal notification of the dissolution, you still may end the marriage through a default divorce. This office offers only limited assistance on default cases, but suggests default be used only if you have little property or debts, no children, and no need for spousal support.

NULLITY: A nullity (or annulment) is a court order that the marriage never existed. It is only granted on one of several specific grounds, including bigamy and fraud, which must exist at the time of marriage. Brevity of the marriage does not qualify. Unlike dissolution, there is no residency requirement. Nullity must be filed via a private attorney. Consult the Legal Assistance Attorney if you feel you have grounds for a nullity.

RESIDENCY: For a dissolution either you or your spouse must have lived in California for at least six months and also in the county in which the action is filed for at least three months immediately before filing the petition. One spouse may live out-of-state or outside the United States and still participate. After the petition is filed, there is no further requirement for residency, so you can move anywhere you wish.

CALIFORNIA WAITING PERIOD: California law imposes a six-month waiting period before your dissolution action can be finalized. This six-month period starts the day the respondent files the Appearance, Stipulation and Waiver (ASW) form or the date the respondent is served. You remain married until the date the Judge enters on your Judgment and Notice of Entry of Judgment forms.

FILING FEES: The fee to file the Petition and the Appearance, Stipulation and Waiver (ASW) form for dissolution, legal separation or nullity varies among counties. In Monterey the fee is about \$190 for the Petition and \$190 for the ASW. **The fee for the ASW form is waived if the respondent is on active duty.** These are the only fees in an uncontested case and both can be waived if the court orders them waived; you must file an Application for Waiver of Court Fees and Costs, Form 982(a)(17) to request a waiver. There are income restrictions for granting a waiver of the filing fees. Before filing for a waiver, check the application packet at the courthouse to see if you qualify. The one and only fee for a Summary Dissolution is about \$190.

III. SETTLING THE ISSUES

MARITAL SETTLEMENT AGREEMENT: The marital settlement agreement is an important part of the uncontested dissolution, legal separation or nullity. It is an agreement between you and your spouse, which records your understandings on the issues of property, debts, child custody, child support, spousal support, pensions and others. The Legal Assistance Office will assist you in completing an agreement that is to be filed with the judgment in your case. People using either Summary Dissolution or the regular dissolution will prepare a Marital Separation Agreement. It is not necessary to have a completed, signed marital settlement agreement to file your petition. However, before the Legal Assistance Office will assist you in preparing forms to file with the court, you must have the terms of your agreement worked out with your spouse in writing. Other informative materials on Marital Settlement Agreements are on the Staff Judge Advocate Web Page at <http://www.monterey.army.mil/atzp/ja/la/famlaw.htm>

A sample Marital Settlement Agreement is included in this packet, created by this office. Remember, you will be working with two packets of papers: this guide from the Legal Assistance Office, and another from the court. The sample settlement agreement is part of this guide. The court papers are in the court's packet. Your Marital Settlement Agreement must be tailored to you and your family's needs, and you should discuss your specific agreement with a Legal Assistance Attorney before you and your spouse sign the agreement. The Marital Settlement Agreement may be downloaded to your disk from the legal assistance computer without an appointment. It is in MS Word.

DIVISION OF PROPERTY: Since California is a "community property" state the court would divide your property by awarding each party their own separate property and one half of the community property. You, however, are saving a lot of money and trauma by reaching your own agreement concerning division of property. The court will adhere to whatever agreement you reach as long as it is clear that you each knowingly and voluntarily entered into it. "Community" property is defined as assets acquired during the course of the marriage prior to separation, except those assets that are separate property. Separate property is defined as property each spouse owned prior to marriage or property that each spouse acquired after the separation.

Gifts (including inheritances) made to one member of the community during the course of the marriage, remain separate property unless the spouse or third party specifically made a gift of the asset to the community.

DIVISION OF DEBTS: A debt arising before the marriage is a separate debt and will remain with the party who incurred it. Debts incurred by either spouse during the marriage and prior to separation are usually community liabilities and are divided as property is divided. Remember, however, that your Marital Settlement Agreement is between you and your spouse; your creditors are not bound by your agreement. Therefore, if your spouse fails to pay a community debt as agreed, the creditor can still take collection action against you. **OPTIONS:** Request creditor to remove one party from the loan; or one party refinances the loan, with or without co-signer

or in any case use hold harmless clause in paragraph 3 of Marital Settlement Agreement. You should consult a Legal Assistance Attorney if you have any questions about your debts.

CHILD CUSTODY AND VISITATION:

1. Physical Custody is a term that refers to the individual with whom the child actually lives. The court is concerned with the "best interests of the child" and will go along with any living arrangement agreed to by you and your spouse, provided, that you two are looking out for the best interests of your child. It is usually in the child's best interest to maintain a healthy relationship with each parent and to spend as much time as possible with each parent. There are joint custody and sole custody.

2. Legal custody refers to who makes decisions about issues of health, education, and welfare and includes such things as schooling, religious training, summer camp, birth control information, medical care, and getting a driver's license. Joint legal custody is most common, but a court can award sole legal custody to one parent.

3. Visitation rights are granted to the parent who does not have physical custody of the child. Visitation agreements should help ensure frequent and continuing contact with both parents. Parents can agree to any schedule. A provision for payment of travel expenses should be included. A parent cannot deny visitation because of nonpayment of child support.

Custody and visitation can be modified, although it may be difficult and expensive. Modification by the court is allowed, if there is a change of circumstances that would make a modification in the best interests of the child.

CHILD SUPPORT: California child support law assumes that each parent will provide their child with an established percentage of their income. The non-custodial parent pays a share of the support to the custodial parent. The actual amount of support paid by the non-custodial parent depends on the net income of both parents, the number of children involved, projected amount of time of visitation, and day care costs. Net income is generally gross income (from all sources including Basic Allowance for Housing (BAH) and other entitlements) less actual taxes, social security and medical insurance premiums. To determine the exact amount it is recommended that you use one of the commercially available computer programs; otherwise, you can approximate the amount by working through the formula in "How to Do Your Own Divorce in California", Nolo Press, available at libraries, bookstores. The Monterey County Family Law Facilitator (647-7724) can compute the California guideline amounts.

BAH: BAH (Basic Allowance for Housing) is not the amount of child or spousal support that should be written into the agreement; for purposes of California law it is merely another source of income to determine net income. Note: after a service member is divorced (has a final decree of dissolution) that service member no longer rates BAH at the "with dependents rate." If the service member is living in the barracks or any single quarters on base and paying child support, he/she will only receive the difference between the "with dependents" rate and the "without

dependents" rate (\$65 to \$195). However, service members are not entitled to this "BAH differential" if the amount of child support they pay is less than the amount they would receive in BAH differential for their rank.

FAMILY SUPPORT: Regulations of each service require a service member to support his or her family. In the absence of a court order or agreement between spouses, those regulations specify how much the service member should pay. Military service will not be used to evade family support obligations.

CHILD CARE COSTS: California can order as additional child support the child care expenses that are incurred so that one of the parents can work or obtain reasonably necessary education or training for employment skills. The expenses must be shared equally unless agreed otherwise. You should address this item in your agreement in paragraph 8.

UNINSURED HEALTH CARE COSTS FOR CHILDREN: The court can order as child support a parent to reimburse the other parent a share of the uninsured health care costs within a specified time. The parent incurring the costs must provide the other parent with an itemized statement of costs, proof of any payment made, and a request for payment of the other parent's share within a reasonable time. The other parent must make the reimbursement or payment within a reasonable time. Address these issues in your agreement in paragraph 8.

SPOUSAL SUPPORT: Spousal support depends on the needs of each spouse. Things to consider are: length of marriage, earning potential of each party, and time which must be spent caring for the children. Marriages near 10 years may be eligible for spousal support for life. Men rate spousal support as do women. Some states, other than California, may not award spousal support.

PENSIONS: Military retirement pay, like other pension plans and annuities, is subject to division as community property. All states divide the pension. The non-military spouse's interest in the retirement benefit is determined by taking one-half of the quotient of the years of marriage divided by the total years of service creditable for establishing the right to receive a pension. For example: SPC Jane Soldier has been in the Army for 5 years and has been married to John Civilian for all 5 years. If SPC Soldier stays in the Army she will have the right to retire and receive a pension when she has completed 20 years, so John Civilian's interest in SPC Soldier's retirement is $\frac{1}{2} \times \frac{5}{20}$ which is $\frac{1}{8}$. To divide the pension, carefully review the pension provisions of the attached separation agreement and see your Legal Assistance Attorney about the proper language to insert in your agreement.

SURVIVOR BENEFIT PLAN: The parties may also agree to award the Survivor Benefit Plan to a soon-to-be former spouse or the court could make such an order. Retirement checks end after a military retiree dies. To enable retirees to provide for their families after their deaths, the government offers a low-cost annuity program. Even before retirement but after 20 years of service, spouses and children automatically receive full SBP benefits. At retirement service members opt to continue participation in SBP, reduce to a lower amount of coverage, or withdraw.

Both spouses must agree in writing to choose less than the full rate. The monthly costs of SBP are deducted from the retirement paycheck. For more information on SBP consult DFAS's Web Page at www.dfasmil/money/retired/survbnft.htm.

MILITARY BENEFITS: Generally a non-service member spouse loses his or her military benefits when the divorce is final. There are special provisions, however, for non-military spouses when there has been a lengthy marriage and a lengthy service career. Ask the Legal Assistance Attorney about the possibility of continued benefits for 20/20/20 and 20/20/15 former spouses and request the client hand-out entitled "Fact Sheet - Uniformed Services Former Spouses' Protection Act of 1982 (USFSPA)". Children of a service member remain military dependents even if they do not live with the service member, and so they retain service connected benefits.

SGLI AND COMMERCIAL LIFE INSURANCE BENEFICIARIES: People on active duty are automatically insured for \$250,000 unless they decline or choose partial coverage. Service members are reminded that they may want to change the name of the beneficiary for their SGLI and commercial life insurance proceeds. Spouses may agree on the selection of beneficiaries and amount of coverage. Such agreement can make the beneficiary designation irrevocable, if the spouses say so in their Marital Settlement Agreement.

TAXES: You may want to address in your agreement which parents will receive the tax exemption for children. If it is not addressed in the agreement, without a court order otherwise, the tax exemption for children will belong to the parent with whom the children live more than 50% in a calendar year. The party wishing to claim the child(ren) as a dependent(s) should file IRS Form 8332 with the IRS. The form is available at your nearest legal office. The party releasing his claim to the exemption(s) must sign releasing his claim on Form 8332. Spousal support/alimony is a tax deduction for the person paying and income for the person receiving it, if it is paid pursuant to a written agreement or court order. If there is no written agreement or court order it is neither a deduction or income. You cannot file a joint tax return if your divorce is final on or before December 31 of any tax year.

See IRS Publication No. 504, "Tax Information for Divorced or Separated Individuals".

MILITARY HOUSING AND PAID MILITARY MOVES: Family member entitlement to local military housing ends 90 days after the service member moves out. If the service member remains in housing with dependent children, the entitlement to housing continues. The U.S. government will not pay the expenses for moving household goods and/or family members unless the service member is on reassignment or end-of-service orders out of the area. Check with the Transportation Office about a "split shipment", any associated additional cost, and temporary storage of household goods. Put in your Marital Settlement Agreement who will pay for specific costs which the Government does not pay.

WHAT IF MY SPOUSE BECOMES ABUSIVE?: Prior to or during the dissolution proceedings, either spouse may petition the court for a restraining order. The

purpose of a restraining order is to prevent irreparable injury to the spouse. The court may issue an order preventing the abusive spouse from molesting or disturbing the peace of the other spouse. The order may prohibit the abusive spouse from entering the family home or the home of the other spouse or from staying in the family home. If the judge issues a temporary order, get five free certified copies from the courtroom clerk. Ensure that copies are delivered to the Monterey County Sheriff's Department (647-7702) which will enter it into the nation-wide criminal intelligence computer information database. Also ensure that the Federal Police (242-7851/5634) receive a copy, and if the abuser is military, provide one to the service member's commander. If the order is violated, the police can arrest and take the abusive spouse into custody without a warrant. A commander may issue a separate military order related to the judge's restraining which, if violated, subjects a service member to punishment under the UCMJ. Restraining orders affecting residential placement of children, freezing funds in accounts, and preventing the transfer of property can also be obtained. The YMCA conducts a temporary restraining order clinic by appointment. Call 649-0834 for details. The Staff Judge Advocate (242-5082/6416) will assist victims of abuse in referrals to the proper agencies.

IV. PROCEDURAL CHECKLIST ("WHAT DO I DO NEXT?")

_____ 1. Read this "Guide to Dissolution." thoroughly. Note any questions and bring them to your appointment. You may want to read "How to Do Your Own Divorce" by Nolo Press.

_____ 2. Work on your Marital Settlement Agreement.

_____ 3. Pick up the court forms if you think your case is uncontested, i.e. both of you will sign the agreement. Go to the Clerk of Court's office for the Superior Court of the county in which you live and ask either for the "Summary Dissolution Forms Packet" forms packet or a packet of "regular dissolution forms, depending on the type for which you qualify. If you request a regular a regular dissolution packet, also ask for two forms that often are not in the packet: The "Appearance, Stipulation and Waiver" Form 1282.50 (ASW) and, if there are children of the marriage, the Declaration Under Uniform Child Custody Jurisdiction Act Form MC 150. IF YOU QUALIFY TO HAVE COURT FILING FEES WAIVED, YOU SHOULD ASK FOR THE "WAIVER OF FILING FEE" FORMS. Court address in Monterey is 1200 Aguajito Road (central Monterey exit off Hwy 1), and in Salinas the address is 240 Church Street (647-7730). **The forms are available for a nominal fee at the courthouse or may be printed at no cost from this website: www.courtinfo.ca.gov/cgi-bin/forms.cgi**

_____ 4. You are ready for your first appointment if your Marital Settlement Agreement is typed and ready to be signed. Bring it to your first appointment. Our materials provide a model Marital Settlement Agreement--use it to aid you identifying your own terms. Also bring:

PENCILED DRAFTS OF THE FOLLOWING FORMS, WHICH YOU WILL FIND IN YOUR PACKET OF COURT FORMS:

- a. Income Information Form 1285.50a)
- b. Expense Information (Form 1285.50b)
- c. Income & Expense Declaration (Form 1285.50)
- d. Schedule of Assets & Debts (Form 1292.11)
- e. Declaration of Disclosure (Form 1292)
- f. Declaration Regarding Service of Final Declaration of Disclosure (Form 1292.05)

Do not sign these documents. Bring penciled drafts of the forms and typed, unsigned Marital Settlement Agreement to your first meeting with the attorney.

_____ 5. After seeing the attorney, type the papers listed in Section 5 a, b, c, e for you and your spouse as SEPARATE FORMS. Type one copy of each form. DO NOT sign and date these forms yet. Make two good copies of each form. Type the Schedule of Assets & Debts listed as (d) above. Leave space for signatures for both parties on (d). Often both spouses can sign this form. The County law library has a type writer; check your nearest library for one.

Then type one good copy of the Petition (Form 1281), Declaration Under Uniform Child Custody Jurisdiction Act (Form MC 150) (if children of the marriage), Declaration Regarding Service of Final Declaration of Disclosure (1292.05), and your spouse's Appearance Stipulation and Waiver (1282.50). Sign and date only the Petition (1281) and UCCJA forms (MC-150). Make 4 good copies of each form.

_____ 6. File the (1) Petition (1281), (2) Declaration Under Uniform Child Custody Jurisdiction Act Form MC-150 (if applicable).

_____ 7. Mail or give your spouse (the respondent) the Appearance Stipulation and Waiver (1282.50), and type in the case number, off the upper right corner of your Petition (1281); also send your spouse his/her set of those forms listed in 5 (a-f). "His/her set" means the documents regarding financial disclosure that s/he will have to return to you informing you about his/her income and expenses. Tell him/her not to sign date and return anything yet EXCEPT the Appearance Stipulation and Waiver (ASW). Tell him/her to mail you back the ASW as soon as he or she is able -- meaning as soon as he or she is comfortable and that he/she understands what is being signed. If he or she is not ready to sign, suggest he or she speak with private counsel, or counsel in the JAG office near him or her, if he/she is not here. If he or she is in this area, this office will suggest other options to obtain an attorney to review the papers.

_____ 8. Once the Appearance, Stipulation and Waiver form is returned to you, file it with the clerk of court. This form must be signed and filed after you have filed your petition. Do not do this step without the advice and approval of your attorney.

_____ 9. Once the ASW is filed with the court, you and your spouse will exchange the papers listed in 5 (a-f). They must be dated after the ASW is signed. You must send your spouse your Income Information, Expense Information, Income and

Expense Declaration, Declaration of Disclosure, Schedule of Assets and Debts forms. Note the date you mailed or delivered them so you may properly fill out your Declaration Regarding Service of Final Declaration of Disclosure (Form 1006). That date must precede the date you each sign the Separation Agreement. You may both sign the Separation Agreement after you have each given or sent Form 1006 to your spouse. Keep a copy of everything you send your spouse. He or she may sign the same Schedule of Assets and Debts form you signed, and return it to you, but must keep a copy for him/herself after signing. He or she should keep a copy of all forms she or he is sending you. You should receive your spouse's Income Information, Expense Information, Income and Expense Declaration, Declaration of Disclosure, and Schedule of Assets and Debts. Additionally, s/he should send you his/her Declaration Regarding Service of Final Declaration of Disclosure to be filed with the court.

_____ 10. File both parties' Declaration Regarding Service of Final Declaration of Disclosure.

_____ 11. Schedule your last appointment with an attorney to prepare your last set of court forms. These forms are the Declaration for Default or Uncontested Dissolution (Form 1286.50), Judgment (Form 1287), Notice of Entry of Judgment (Form 1290), and Request for Hearing (Form Clerk 36). Bring the signed copy of the Marital Settlement Agreement with you and all forms that you have filed with court. When you file your Notice of Entry of Judgment, give the clerk to stamped envelopes, one addressed to you and one addressed to your spouse.

_____ 12. Type, sign, copy and file the rest of your forms, along with two self-addressed stamped envelopes. As with all the forms, type if applicable "NONE", "NOT APPLICABLE", or "UNKNOWN".

_____ 13. Make sure the Judge has signed your Judgment. If you do not get your judgment signed you will still be married. Note the date that you are divorced. Get a "certified copy" of your judgment from the court for your permanent records.

_____ 14. Start a new, happier life!

_____ 15. Get a new will.